

Intelsat, Ltd.

IB 05-18

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Federal Communications Commission
Washington, DC 20554

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Federal Communications Commission
Office of Secretary

In the Matter of:

INTELSAT, LTD.

File No. SAT-MS-_____

Petition for Declaratory Ruling that
Intelsat, Ltd. Complies With Section
621(5)(F) of the ORBIT Act

Received

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Policy Branch
International Bureau**PETITION FOR DECLARATORY RULING THAT INTELSAT, LTD. COMPLIES
WITH SECTION 621(5)(F) OF THE ORBIT ACT**

Intelsat, Ltd. ("Intelsat"), pursuant to Section 1.2 of the Federal Communications Commission's ("FCC" or "Commission") rules and Section 621(5)(F) of the Open-Market Reorganization for the Betterment of International Telecommunications Act ("ORBIT Act" or "Act"),¹ hereby petitions the Commission for a declaratory ruling that, upon consummation of Intelsat's pending transaction with Zeus Holdings Limited ("Zeus Transaction"),² Intelsat will be in compliance with Section 621(5)(F) of the Act.

¹ 47 C.F.R. § 1.2; Open-Market Reorganization for the Betterment of International Telecommunications Act, Pub. L. No. 106-180, 114 Stat. 48 (2000), *as amended*, Pub. L. No. 107-233 (2002), *as amended*, Pub. L. No. 108-228 (2004), *as amended*, Pub. L. No. 108-371 (2004).

² See *Intelsat, Ltd. and Zeus Holdings Limited, Consolidated Application for Consent to Transfer of Control of Holders of Title II and Title III Authorizations and Petition for Declaratory Ruling Under Section 310 of the Communications Act of 1934, As Amended*, IB Docket No. 04-366, at 32 (filed Sept. 3, 2004) ("Consolidated Application"); *Intelsat, Ltd. and Zeus Holdings Limited, Consolidated Application for Consent to Transfer of Control of Holders of Title II and Title III Authorizations and Petition for Declaratory Ruling Under Section 310 of the Communications Act of 1934, As Amended*, IB Docket No. 04-366 (filed Sept. 10, 2004) ("Erratum"). See also Letter from Tom W. Davidson, Counsel for Zeus Holdings Limited and Bert W. Rein, Counsel for Intelsat, Ltd., to Marlene H. Dortch, Secretary, FCC, IB Docket No. 04-366 (dated Nov. 6, 2004); Letter from James L. Ball, Chief, Policy Division, International Bureau, FCC to Tom W. Davidson, Counsel for Zeus Holdings Limited and Bert W. Rein, Counsel for Intelsat, Ltd., IB Docket No. 04-366 (dated October 19, 2004); Letter from Tom W. Davidson, Counsel for Zeus Holdings Limited, to Marlene H. Dortch, Secretary, FCC, IB Docket

Through this Petition for Declaratory Ruling, Intelsat satisfies the requirement in Section 621(5)(F)(i) of the Act that it certify its compliance with Section 621(5)(F).³ As explained below, Intelsat also has provided the information requisite for verification of its certification pursuant to Section 621(5)(F)(ii). Intelsat therefore requests that the Commission, as required by Section 621(5)(F)(iii), expeditiously commence a notice and comment period regarding this Petition for Declaratory Ruling and determine that Intelsat is in compliance with the certification provided herein on the date of consummation of the pending Zeus Transaction.

I. BACKGROUND

Congress passed the ORBIT Act in 2000 to “promote a fully competitive global market for satellite communications services ... by fully privatizing the intergovernmental satellite organizations, INTELSAT and Inmarsat.”⁴ The FCC has determined that Intelsat is in compliance with most of the ORBIT Act privatization provisions.⁵ Intelsat, however, has not previously sought to demonstrate to the Commission that it complies with Section 621(5) of the Act.

Effective October 25, 2004, Congress amended the Act to provide two methods for showing compliance with Section 621(5). Intelsat may conduct an initial public offering (“IPO”) in accordance with Section 621(5)(A). Alternatively, under 621(5)(F), Intelsat may forgo an IPO

No. 04-366 (dated Nov. 30, 2004); Letter from Tom W. Davidson, Counsel for Zeus Holdings Limited, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 04-366 (dated Dec. 9, 2004) (together, “Letters”).

³ See also the Certification of Intelsat, Ltd. attached hereto.

⁴ ORBIT Act, § 2.

⁵ In a 2001 Order, the Commission concluded that “INTELSAT will privatize in a manner consistent with the requirements of Section 621 and 622 of the ORBIT Act,” and determined that “Section 622 of the Act has been satisfied.” *Applications of Intelsat LLC; For Authority to Operate, and to Further Construct, Launch and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit*, Memorandum Opinion Order and Authorization, 16 FCC Rcd 12280, 12297, 12302, ¶¶ 51, 71 (2001).

and public listing of securities if it otherwise achieves substantial dilution of former signatory ownership, eliminates former signatory control, and has no intergovernmental organization ownership. Section 621(5)(F) states:

a successor entity may be deemed a national corporation and may forgo an initial public offering and public securities listing and still achieve the purposes of this section if—

(i) the successor entity certifies to the Commission that—

(I) the successor entity has achieved substantial dilution of the aggregate amount of signatory or former signatory financial interest in such entity;

(II) any signatories and former signatories that retain a financial interest in such successor entity do not possess, together or individually, effective control of such successor entity; and

(III) no intergovernmental organization has any ownership interest in a successor entity of INTELSAT or more than a minimal ownership interest in a successor entity of Inmarsat;

(ii) the successor entity provides such financial and other information to the Commission as the Commission may require to verify such certification; and

(iii) the Commission determines, after notice and comment, that the successor entity is in compliance with such certification.⁶

II. INTELSAT'S CERTIFICATION UNDER SECTION 621(5)(F)(i)

Intelsat certifies, pursuant to Section 621(5)(F)(i)(I), that, upon consummation of the proposed Zeus Transaction, all existing signatory or former signatory financial interests in all Intelsat entities will be eliminated. Thus, Intelsat will have achieved “substantial dilution” of the aggregate amount of signatory or former signatory financial interest under the amended ORBIT

⁶ ORBIT Act, § 621(5)(F).

Act.⁷ Intelsat further certifies, as required by Section 621(5)(F)(i)(II), that, upon consummation of the proposed Zeus Transaction, no signatories or former signatories will possess, together or individually, effective control of a successor entity of INTELSAT. Intelsat also certifies, under Section 621(5)(F)(i)(III), that no intergovernmental organization now has or will have any ownership interest in a successor entity of INTELSAT.

III. INFORMATION AVAILABLE FOR VERIFICATION UNDER SECTION 621(5)(F)(ii)

On September 3, 2004, Intelsat, together with Zeus Holdings Limited, filed a Consolidated Application for Consent to Transfers of Control of the Holders of Title II and Title III Authorizations.⁸ Intelsat and Zeus Holdings Limited filed an Erratum to the Consolidated Application, which included a replacement application, on September 10, 2004.⁹ By Letters dated November 6, 2004, November 30, 2004, and December 9, 2004, Intelsat and Zeus Holdings Limited provided supplemental information in response to Commission requests for additional ownership information.¹⁰ The Consolidated Application, Erratum, and Letters, which Intelsat incorporates by reference, describe Intelsat's transaction with Zeus Holdings Limited, including the FCC's requested identification of Intelsat's proposed new owners.¹¹ Notably, these

⁷ The Act, as amended, defines "substantial dilution" to mean "that a majority of the financial interests in the successor entity is no longer held or controlled, directly or indirectly, by signatories or former signatories." *Id.*, § 621(5)(G).

⁸ See Consolidated Application, n. 2, *supra*.

⁹ See Erratum, n. 2, *supra*.

¹⁰ See Letters, n. 2, *supra*.

¹¹ See generally Consolidated Application, Erratum, and Letters. The Commission approved the Zeus Transaction on December 22, 2004. See *Intelsat, Ltd. and Zeus Holdings Limited, Consolidated Application for Consent to Transfer of Control of Holders of Title II and Title III Authorizations and Petition for Declaratory Ruling Under Section 310 of the Communications Act of 1934, As Amended*, Order and Authorization, DA 04-4034 (Int'l Bur. rel. Dec. 22, 2004).

materials confirm that upon consummation of the proposed transaction, the existing financial interests in Intelsat held or controlled by signatories, former signatories or intergovernmental organizations will be transferred to Zeus.¹² The Consolidated Application, Erratum, and Letters already on file with the Commission can be used to conclusively verify the certification provided above.

IV. THE PUBLIC INTEREST SUPPORTS EXPEDITIOUS COMMENCEMENT OF A NOTICE AND COMMENT PERIOD AND A PROMPT DETERMINATION THAT INTELSAT WILL BE IN COMPLIANCE WITH ITS CERTIFICATION UPON CONSUMMATION OF THE ZEUS TRANSACTION

Intelsat requests that the Commission, as required by Section 621(5)(F)(iii), determine, after notice and comment, that Intelsat will be in compliance with its certification immediately upon consummation of the Zeus Transaction. Expeditious commencement of the statutorily required notice and comment period will serve the public interest. As soon as the notice and comment period concludes,¹³ the Commission will be able to issue a determination, which would become effective on the later of the date that Intelsat consummates the Zeus Transaction or the date on which the Commission issues the determination requested herein, that establishes Intelsat's compliance with Section 621(5)(F). The issuance of this determination will remove regulatory uncertainty regarding Intelsat's authority to provide a full range of services following the closing date. The determination will thus provide U.S. consumers access to additional,

¹² While the ownership interest of former signatories in Intelsat, Ltd. totaled 86.1% at the time of INTELSAT's July 2001 privatization, the ownership interest of former signatories had fallen to 76.6% at the time of the August 2004 announcement of the proposed sale of Intelsat to Zeus Holdings. As noted above, upon closing of the Zeus Transaction, the existing ownership interest of former signatories in Intelsat, Ltd. will be eliminated.

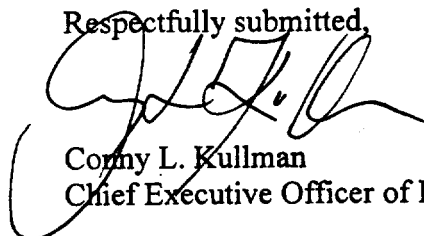
¹³ The ORBIT Act does not prescribe the length of the notice and comment period. Given that the public already had a 30 day opportunity to review the Zeus Transaction applications containing the information necessary for the FCC to verify Intelsat's compliance with its certifications, the fact that the applications were unopposed, and the fact that the Order granting the applications has been issued, Intelsat respectfully suggests that fourteen (14) days would be an appropriate notice and comment period.

competitive choice for DTH, DBS, and services in the Ka- and V-bands effective the day that Intelsat consummates its transaction with Zeus or the date on which the Commission issues the requested determination – whichever occurs later.¹⁴ Given that the full details of Intelsat's post-closing ownership are already of record before the Commission, no public purpose would be served by deferring the issuance or effective date of a Commission determination regarding Intelsat's certification under Section 621(5)(F)(iii).

V. CONCLUSION

Intelsat requests that the Commission, pursuant to Section 621(5)(F)(iii), promptly commence a notice and comment period regarding this Petition for Declaratory Ruling and determine that Intelsat will be in compliance with the certification provided herein upon consummation of the Zeus Transaction.

Respectfully submitted,



Coryn L. Kullman
Chief Executive Officer of Intelsat, Ltd.

Bert W. Rein
Carl R. Frank
Jennifer D. Hindin
Amy E. Bender
WILEY REIN & FIELDING LLP
1776 K Street, N.W.
Washington, DC 20006

December 23, 2004

¹⁴ On November 24, 2004, Intelsat filed a Request for Technical Corrections of the conditions on Intelsat's U.S. space station authorizations that are related to Intelsat's compliance with the ORBIT Act. See Letter from Bert W. Rein, Counsel to Intelsat LLC and Intelsat North America LLC, to Thomas S. Tycz, Chief, Satellite Division, FCC, File Nos. SAT-A/O20000119-000002 *et al.* (dated Nov. 24, 2004). This Request, if granted, would enable Intelsat to provide "additional services" to U.S. consumers immediately upon the effective date of a Commission finding that Intelsat is in compliance with the certification provided herein.

CERTIFICATION OF INTELSAT, LTD.

I, Conny L. Kullman, Chief Executive Officer of Intelsat, Ltd. ("Intelsat"), declare under penalty of perjury as follows:

- (i) Intelsat has achieved substantial dilution of the aggregate amount of former signatory financial interest in Intelsat;
- (ii) Any signatories or former signatories that retain a financial interest in Intelsat do not possess, together or individually, effective control of Intelsat;
- (iii) No intergovernmental organization has more than a minimal ownership interest in Intelsat; and
- (iv) I have read the foregoing Petition for Declaratory Ruling that Intelsat, Ltd. Complies with Section 621(5)(F) of the ORBIT Act. The representations contained therein are true and correct.

Intelsat, Ltd.

By:


Conny L. Kullman
Chief Executive Officer of Intelsat, Ltd.

Executed on: December 23, 2004



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SAT-PDR-20041228-00231

Intelsat, Ltd.

Wiley Rein & Fielding LLP

January 14, 2005

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BY HAND DELIVERY

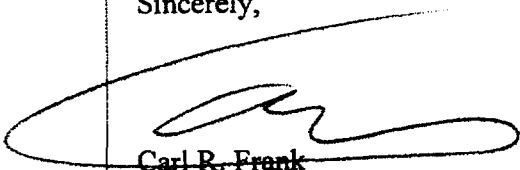
Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *Supplemental Submission*
Intelsat, Ltd., Petition for Declaratory Ruling that Intelsat, Ltd. Complies
with Section 621(5)(F) of the ORBIT Act
File No. SAT-MS-_____

Dear Ms. Dortch:

Intelsat, Ltd. ("Intelsat"), by its attorneys, hereby submits a supplement to its Petition for Declaratory Ruling that Intelsat, Ltd. Complies with Section 621(5)(F) of the ORBIT Act (and its attached Certification of Intelsat, Ltd.), which was filed on December 23, 2004. Specifically, Intelsat updates its Certification to reflect the Commission's decision to approve Intelsat's transaction with Zeus Holdings Limited.¹

Sincerely,



Carl R. Frank
Counsel to Intelsat, Ltd.

Enclosure

cc: Roderick Porter

¹ See *Intelsat, Ltd. and Zeus Holdings Limited, Consolidated Application for Consent to Transfer of Control of Holders of Title II and Title III Authorizations and Petition for Declaratory Ruling Under Section 310 of the Communications Act of 1934, As Amended, Order and Authorization, DA 04-4034* (Int'l Bur. rel. Dec. 22, 2004).

CERTIFICATION OF INTELSAT, LTD.

I, Conny L. Kullman, Chief Executive Officer of Intelsat, Ltd. ("Intelsat"), declare under penalty of perjury as follows:

(i) Upon consummation of Intelsat's transaction with Zeus Holdings Limited (the "Zeus Transaction"), which the Federal Communications Commission ("FCC") approved by Order dated December 22, 2004 (DA 04-4034), Intelsat will achieve substantial dilution of the aggregate amount of former signatory financial interest in Intelsat;

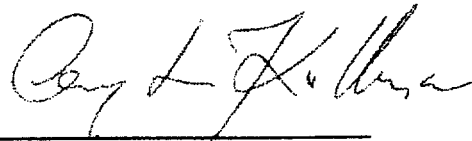
(ii) Upon consummation of the Zeus Transaction, which the FCC approved on December 22, 2004 (DA 04-4034), any signatories or former signatories that retain a financial interest in Intelsat will not possess, together or individually, effective control of Intelsat;

(iii) Upon consummation of the Zeus Transaction, which the FCC approved on December 22, 2004 (DA 04-4034), no intergovernmental organization will have any ownership interest in a successor entity of Intelsat; and

(iv) I have read the foregoing Petition for Declaratory Ruling that Intelsat, Ltd. Complies with Section 621(5)(F) of the ORBIT Act. The representations contained therein are true and correct.

Intelsat, Ltd.

By:



Conny L. Kullman
Chief Executive Officer of Intelsat, Ltd.

Executed on: January 13, 2005